



Policy Guidance for Conservation Easements Involving The State of Georgia

Background

A conservation easement is a binding legal contract between a landowner and a qualified entity (a local, state, or federal governmental entity or a nonprofit organization recognized under Section 501(c)3 of the Internal Revenue Code) to ensure that the conservation values on a given piece of property are maintained. The State of Georgia encourages the use of perpetual conservation easements as a way to protect the significant conservation values of property in the state. The use of conservation easements meets one of the goals of the Georgia Land Conservation Program (GLCP) of keeping property in private ownership and stewardship while maintaining significant conservation values. The State offers grant and low interest loan programs as well as a conservation tax credit to encourage the use of conservation easements.

This policy is intended to provide guidance for land trusts, landowners, and public agencies as they develop conservation easements involving the State of Georgia. Any conservation easement that is being proposed for a Georgia Land Conservation Program grant or loan, a Georgia Conservation Tax Credit, or where the State of Georgia is the proposed easement holder will need to be reviewed and approved by the State. Proponents seeking the State's approval of a conservation easement should submit a draft of the document as early as possible, particularly where the conservation restriction provisions are complex or provide for certain retained rights which may be inconsistent with the preservation of the property's conservation values. For projects where the State is the proposed easement holder, the State's standard form of easement must be used. Where another qualifying entity is the proposed easement holder, other forms of easement are acceptable, but the specific terms must be reviewed and approved by the State prior to the provision of any monetary incentives from the State.

The State recognizes that the terms of each conservation easement will be unique depending on the history and nature of the property and the desires of the parties involved. However, any conservation easement must be consistent with the letter and spirit of all applicable laws, including Sections 170(h) and 501(c) (3) of the Internal Revenue Code and the Georgia Uniform Conservation Easement Act, O.C.G.A. § 44-10-1 et seq. Excellent guidance on the appropriate components of a conservation easement can be found in *Land Trust Standards and Practices* and other publications of the Land Trust Alliance or in *The Landowners Guide to Conservation Easements* available through the Georgia Land Trust Service Center.

The following outline highlights several sections that should be in any conservation easement and which need to be addressed for projects where the State of Georgia is participating through provision of a GLCP grant, a low interest loan, a tax credit, or where the State will be holding the conservation easement.

1. Purpose. The Purpose of the conservation easement must be to preserve the property in perpetuity and to prevent any use of the Property that will adversely impact or interfere with the property's conservation values.

2. Conservation Values. The Conservation Values of the property represent the reasons for creating the conservation easement. These values should be defined, listed and described such that future Landowners and the courts understand those reasons.

3. Restrictions and Prohibited Uses. Any activity on or use of the Property inconsistent with the Purpose of the conservation easement must be expressly prohibited.

4. Reserved Rights of the Landowner. Rights that are not inconsistent with the Purpose of the conservation easement and which are expressly reserved to the Landowner should be listed.

5. Land Management Plans for Reserved Forestry and/or Agricultural Uses. For conservation easements where forestry and/or agricultural uses are expressly reserved by the Landowner, a Management Plan defining how such uses will be carried out must be prepared, and the Plan must be approved by the easement holder.

6. Baseline Documentation Report. There must be a detailed record of the condition of the property at the time the easement is executed. The Baseline Documentation Report is that record, and formal acknowledgment of this document by the Grantee and Grantor is required. The Baseline Documentation Report provides the basis for monitoring and is critical if an easement violation occurs in the future.

7. Assignment of Rights to the State of Georgia. For conservation easements where the State is providing a monetary incentive (e.g., GLCP grant, loan, or tax credit), the easement must contain language that prohibits any future amendments without written approval of the State. For conservation easements where the State is providing direct funding through a GLCP grant or low interest loan, the State also requires a right of entry to determine if the landowner and easement holder are complying with the terms of the easement (with reasonable notice), and the right to post a sign on the Property stating that it is permanently protected as part of the Georgia Land Conservation Program.